

Court Services Toronto Local Appeal Body 40 Orchard View Blvd Suite 211 Toronto, Ontario M4R 1B9 Telephone: 416-392-4697 Fax: 416-696-4307 Email: tlab@toronto.ca Website: www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Monday, December 04, 2017

PROCEEDING COMMENCED UNDER subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CLIFFORD MARK GOLDLIST

Applicant: DREW LASZLO ARCHITECT

Property Address/Description: 48 ADMIRAL RD

Committee of Adjustment Case File Number: 17 117234 STE 20 MV

TLAB Case File Number: 17 192143 S45 20 TLAB

Hearing date: Thursday, November 30, 2017

DECISION DELIVERED BY Ian James Lord

INTRODUCTION

The Appellant and his spouse have appealed the decision of the Toronto and East York Panel of the City of Toronto ('City') Committee of Adjustment (the 'COA'). The COA refused variances to alter a three-storey semi-detached dwelling by the intended construction of a rear two-storey addition and inclusive of completing interior renovations throughout the dwelling, at 48 Admiral Road (the 'subject property').

The subject property is located well within the 'Annex' District of the City, on a block east of St. George Street, west of Bedford Road, north of Bloor Street and south of Davenport Avenue. It is the northerly unit of the semi-detached building on a street of substantial structures having a variety of built forms, ages, dwelling types and impressive architectural diversity. Many of the properties on Admiral Road and surrounding residential streets were built in the latter half of the 19th and early 20th century.

While there is a history of some variance and construction activity in the past at 46 Admiral Road, the adjoining dwelling, none was identified as having occurred on the subject property.

The City took no part in this proceeding. Indeed, there were no other Parties who had identified themselves in accordance with the Rules of the Toronto Local Appeal Body (the 'TLAB'). The owner of 46 Admiral Road attended the appeal Hearing, Ms. Helen Anne Humphreys. While she had registered as a Participant, she had not filed the requisite Participant's Statement disclosing the nature of her concerns. Instead, the TLAB posted documentation had identified her concerns expressed in email correspondence. Her evidence was heard without objection and Rule 2 permits a relaxation of strict compliance obligations in circumstances where substantive disclosure has occurred.

BACKGROUND

A renovation plan was prepared by the architect Applicant, above noted. However, neither that person nor an unnamed planner, also said to have been retained by the Appellant, was present to give evidence. A more recently retained architect, Gabriel Fain, and the Appellant, Clifford Goldlist, gave evidence in support of the appeal. Ms. Humphreys identified several areas of direct concern to her property but otherwise took no objection to the general relief and construction contemplated by the variances.

The Appellant and the retained architect, Mr. Gabriel Fain, had made repeated efforts to enlist City Planning Staff to correct submitted errors and omissions to a Staff Report that had been submitted to the COA, all to no avail.

No Summons to a Witness had been requested of the TLAB, which would have assured attendance of a City Planner.

I identified that I had seen the subject property and surrounding streets and had general familiarity with the materials that had been pre-filed, as well as those before the COA.

Mr. Clifford Goldlist elected to give evidence, exercising a choice provided as between acting as the Appellant's Representative, or providing direct testimony. It is generally not appropriate for a Party to act as both the Representative calling evidence and making submissions and also testifying on their own behalf.

MATTERS IN ISSUE

In hearing and considering the entirety of the evidence addressed, two broad categories of matters were requested and required to be addressed.

First, the merits of the variances sought: two variances were required by the renovation plans to the new City Zoning By-law 569-2013 (under appeal and not in force), relating to building length and floor space index; five variances were sought applicable to the in-force zoning By-law 438-86, adding minimum side wall and side and

front lot line setbacks to the two previous standards, building length and floor space index.

While the COA refused all seven variances, no reasons were provided and none were directly in issue in the evidence of the Hearing.

Second, the proposal to extend the building length of the subject property engendered concerns related to the 'party' wall and its existing extension westerly, the fence separating the rear yards of the adjoining units and a tree said to be located on 46 Admiral Road, in the apparent vicinity of construction.

It is these latter matters to which a significant component of this decision relates.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances form the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

As described, evidence in support of the variances was provided by Messrs. Goldlist and Fain.

Mr. Goldlist, a solicitor, described the intended renovation plans making an entirely compelling case of its desirability and suitability, both in terms of common residential use desires and its location and extent on the lot. He described the property at 46 Admiral Road as having been expanded into its rear yard by a two-storey addition in the past, and a more recent ground floor modest window extension, in approximately 2001. The proposal for the subject property was described as matching but not exceeding the westerly limit of that construction, with the two-storey addition proposed.

He described a manifest error contained in the City Planning Staff Report, Exhibit 3, in communicating to the COA that the addition at 46 Admiral Road was a one-storey rear yard extension. While eventually agreeing this description constituted 'misinformation', no acknowledgement or admission was provided by the Appellant that it was the Appellant who had mis-described or characterized this error to the Participant as placing 46 Admiral Road in an 'illegal' position, under zoning controls. No such allegation appears to have been made by Staff and the description that the error 'left hanging the inference of illegality' is a gloss that was added by the Appellant for whatever its intended purpose, but that clearly created some anxiety and raised the attention of Ms. Humphreys.

Mr. Goldlist and Mr. Fain made diligent and repeated efforts with Staff to have the mis-description withdrawn, clarified, recanted or corrected in advance of the TLAB proceeding, all to no avail.

The evidence from all three witnesses and this Member's own observation confirmed the presence of a two-storey addition to 46 Admiral Road.

In the circumstances, I can make no comment and give no weight to the Staff position as enunciated in Exhibit 3, other than to express concern for the discourtesy shown to a taxpayer of the City by the failure to provide even an email that acknowledged the descriptive error, for whatever influence it might have had. While the Notice of Appeal had asserted a 'Cost' claim (not pursued in evidence), this alone does not fully excuse the 'radio silence' from Staff, which is its record of contribution during and after the COA deliberations.

The Appellant described the plans, Exhibit 5 and the letters of support on file for the project, Exhibit 7.

Mr. Goldlist chose not to address any of the concerns identified in the correspondence and later expanded upon in testimony from Ms. Humphreys.

Gabriel Fain was accepted as a professional architect capable of giving opinion evidence within the realm of architecture. His qualifications and Witness Statement were admitted as Exhibits 1 and 2, to the Hearing. While he did not seek qualification as a professional planner, he demonstrated considerable practice experience in the vicinity and in the field of advancing specialized custom renovations, rebuilds and diverse project typologies with well-known architectural firms.

While Mr. Fain was not the architect who prepared the renovation plans, Exhibit 5, he described them through a summary presentation of his Witness Statement, Exhibit 2, as being entirely consistent with as-built undertakings throughout the neighbourhood. That consistency was demonstrated to include measures of rear yard additions, additions to building length and associated floor space index ('FSI') generation, well within the range sought, and side and yard adjustments.

He identified Official Plan considerations for this 'Neighbourhood' designation, achievement of the criteria in s. 4.1.5 and the manner in which the proposal 'respected and reinforced' the physical character and 'fit' within the neighbourhood. He described

similar renovations by property parcel (seven within 100 m of the subject property) to demonstrate the 'stable but not static' commonalities with the proposal.

In terms of compliance with the intent and purpose of the zoning by-law(s), he noted that the FSI measure of the proposal was on the lower scale of approvals in this eclectic neighbourhood, that privacy by matched building depths was not compromised and that substantial rear yards would continue for both 48 and 46 Admiral Road.

Being consistent with nearby approvals and in-line with common examples of investment, including heritage preservation and add-ons over the past 10 years, he opined the relief sought by the variances was desirable, minor and without impact.

He described enhancements to the mutual party wall and its existing extension by remediated drainage, visual and structural improvements anticipated on the advice of a retained structural engineer.

In his opinion, the four statutory test were met.

On my enquiry, he acknowledged an arborist would be needed to be retained to address all the trees on the lot, not the least of which would be required because of his dialogue with Urban Forestry. Urban Foresty had recommended refusal of the variances because of the potential for adverse impact on a 'large, healthy tree' in the path of the proposed construction.

Also in response to this Member, Mr. Fain gave these opinions: first, the extension proposed can be built, he thought, with the nearest tree in place, using means to protect the tree. He noted that if the TLAB approves the appeal and applies the identified Urban Forestry condition, an application has to be made by or on behalf of the owner, 'with the owner's signature'. Second, he noted a portion of the dividing fence (3.6 m) will need to be removed to permit the construction, but that the portion is identified as being on the subject property, by the recent 2015 survey. Third, he stated unequivocally that the extension could be built given the location of the demising wall and the tree.

It was Mr. Fain's expectation that there was no intention or expectation to adversely impact the neighbor, but rather to advance improvements of mutual benefit.

Curiously as well, Mr. Fain did not address the presence of a below grade entrance stairwell proposed in the location and direct alignment of the nearest tree in issue, shown by the survey to be on the property of 46 Admiral Road, but clearly leaning through the fence and onto the subject property.

On an inquiry from me, he did described the canopy and roots to involve both properties.

The Participant, Ms. Humphreys has owned and resided at 46 Admiral Road for 17 years.

She described herself as having been upset when informed by the Appellants that her 70 year old two-storey 'addition' might be illegal.

Ms. Humphreys was clear that she had no objection 'in principle' to the by-law variances sought but had concerns and did not wish to be placed in the disadvantageous position of having to resort to the courts to protect her property.

The facets of these concerns were clarified by her to be:

- The variances appear to contemplate the removal of the tree on her property which the appellants have sought permission to do and for which she has not given approval. She identified in the Appellant's plans, Exhibit 5, a basement stairwell entrance in a location that appears to require removal of the tree. With this and other actions including an instance of 'excessive' pruning, she expressed concern that any application placed before Urban Forestry not occur without her prior engagement and consent.
- 2. The description of the two properties in the City Staff Report as 'detached' and 'semi-detached' may be reflective of the fact that the 'party' wall, and certainly its extension, are on the property of 46 Admiral Road. For new construction, she had no security or protection proposed for her interests as there had been no communication with her as to particulars of involvement by the project in or affecting the 'party' wall;
- 3. The variances contemplate a '0' side yard setback, consistent with semidetached lots. For new construction, including the contemplated basement entrance, she has had no security or protection proposed for her interests in the extended wall, her foundation, a sub-grade 'bunker' on her property, the fence, or her rear yard deck adjacent the tree.

In summary, she saw civil remedies, in the event of an aggressive action plan, as inappropriate protection in all the circumstances.

She felt her issues needed to be addressed and a resolution in hand before any approval is given.

Ms. Humphreys did not express either the nature, form or the terms under which that resolution might occur, or provide any guidance that might be helpful.

I accepted her speaking notes as Exhibit 8 and being an amplification of her earlier correspondence.

In reply, Mr. Goldlist expressed appreciation for the candor of Ms. Humphrey's remarks and accepted responsibility to address matters arising related to the tree. He acknowledged it being self-evident that compliance with applicable law was incumbent upon the owners of 48 Admiral Road to ensure the property interests of the neighbour are respected.

He further acknowledged that the basement entrance location was not vital to the application. He expressed resistance to the renovations possibly being vetoed or put hostage to matters that should be addressed collaboratively. Mr. Goldlist gave the assurance that the proposed works will not affect the structural integrity of 46 Admiral Road.

He felt the outstanding issues could be addressed later and undertook to remain open to their resolution.

Mr. Fail returned to add that a determination on the matter of the stairwell below grade was contingent on the advice of the arborist and the City Urban Forestry Division.

He confirmed his advice that construction adjacent the shared wall, including structural improvements, insulation from water and providing drainage is a common practice and will be to the mutual benefit of both owners and be the subject of advice from a structural engineer.

ANALYSIS, FINDINGS, REASONS

I have considered the foregoing recitation of evidence and the additional direct testimony of the witnesses as well as the filings on the public record. I am obliged to have regard for the decision of first instance, by the COA, and weigh provincial policy, in addition to a purposeful consideration of the four statutory tests, above recited.

I find that the decision of the COA may have been influenced by misinformation which has been properly corrected before the TLAB. In any event, in the absence of reasons being articulated in any detail and given the election of the City not to appear in this matter, I do not feel constrained by the refusal extant.

I find that the application is consistent with Provincial Policy and conforms to the Growth Plan. This is an inner city site undergoing modest renovation and expansion of a permitted semi-detached dwelling.

Further, I am satisfied by the evidence of Messrs. Goldlist and Fain, with the generous concurrence of the neighbor Humphreys, that the minor variance tests, individually and cumulatively, are satisfied. The subject property, located in a Neighbourhoods designation and surrounded by prominent residences of great integrity, is proposed for regeneration in a gradual manner consistent with area experience. The rear yard extension 'fits' with eclectic rear yards and coach houses in the area and is of a height, massing and scale that respects and reinforces the surrounding built form. It does so with relatively few adjustments to the zoning by-law(s), and in a manner that does not constitute, in scale or number, any aberration from ongoing activities.

I find the variance requested to be minor, desirable and without undue adverse impact that cannot be addressed with appropriate conditions. I accept the assessments of the architect that the renovations, with appropriate pre-consultation and advice, can be undertaken in a manner sensitive to and with the protection of the neighbouring property to the south, foremost in mind. The find of no undue adverse impact is contingent on the assessment and following the advice of an arborist, Urban Forestry and a structural engineer.

The variances if granted will provide for improvements to enhance a semidetached residence located in a central urban setting with new amenities and spaces entirely consistent with the standards, practices and experience in the area. It is this

type of private residential investment that makes the central core of a strong City even stronger.

The TLAB Rules offer mediation services to Appellants and those opposed in the form of compellable, non-binding mediation services. In this particular matter, while not adversaries, the two neighbours are in a dance over matters that take on different perceptions of importance and vulnerabilities.

The Appellant, while making substantial and commendable efforts to engage support and a consensus from all potentially affected neighbours, has not been successful in advising the TLAB of a satisfaction piece or settlement agreement. It is the Appellant who is both the applicant for relief and the initiator of the activities giving rise to the concerns expressed so well by the adjoining owner. It is for the Appellants to provide the evidence to the satisfaction of the TLAB that all of the requisite statutory tests have been met, or can be secured by conditions, to help ensure that the matter is in a state to be advanced by a TLAB decision. Where matters are outstanding, it is better that they be addressed to the extent possible, rather than to ignore or hope they might not materialize in the process of consideration.

No conditions of approval were suggested by the Appellant.

For her part, Ms. Humphreys has come forward with a number of legitimate apprehensions and concerns, none of which are of her own origin. She points to a 'large, healthy tree' shown to the survey to be on her property, and asks: 'What about that?'. She points to her exterior brick wall protrusion shown on the survey to be on her property, and asks: 'How is that to be protected?' She raises the issue of her foundation, root cellar or bunker and the fence and asks the same questions.

These are legitimate inquiries. I make no finding as to whether they are late to be raised or addressed. Certainly, they are plainly obvious issues capable of being addressed if one were to set aside the tensions that property interests can generate in the demanding world of zoning adjustment applications. Emissaries talking with detached appreciation, or mediation, may serve to cast aside the uncertainty and imperfections of communication in an environment where action, not words, is the better demonstration of intent.

In my view, while dialogue must continue, I see it to be inappropriate for the TLAB to compel that to happen. Both neighbours are fully capable of understanding the circumstances and acting upon informed advice. I decline to require mediation; it is neither expedient nor timely given the nature of the outstanding matters.

On the merits, I find this project should be allowed to proceed. If, with proper advice and compliance with applicable law, it appears necessary to remove the tree, I see no reason why that circumstance should stand in the way of a matching dwelling expansion. Both neighbours have experienced the presence of the tree for many years; its roots, trunk and canopy share and extend, to a greater or lesser degree, into both properties. It has survived one construction project at 46 Admiral Road. Urban Forestry will be consulted on its fate and I am confident that both neighbours will participate to

ensure a full consideration will be given to its' continued preservation or, if necessary, removal, as agreed or determined appropriate.

As well, with proper advice and compliance with applicable law, I accept the undertaking of the Appellant to ensure that all matters related to the structural integrity of the walls and fences between the two properties are properly protected on construction. I remain confident here, as well, that the neighbour will participate, be afforded timely and mutual exchanges of information and will work to a consensus, to ensure a minimum of risk, exposure or loss of privacy related to works, in wall construction and preservation and fence replacement.

I have considered the requests of both Ms. Humphreys and Mr. Goldlist that advancement with this project not be on the leave or unilateral action of one or the other.

I find neither request to be entirely without merit or, at the same time, appropriate in the circumstances.

The issues above expressed are well known and should now be addressed on a go forward basis; their resolution should be from the perspective of not just preserving individual use and enjoyment of both premises, but from the fact that generations yet to come will live with their built form legacy.

DECISION AND ORDER

The appeal is allowed and the decision of the Committee of Adjustment applicable to 48 Admiral Road and mailed June 20, 2017 is set aside. The variances as identified in ATTACHMENT 1 hereto and forming part of this decision are approved, subject to the following conditions:

- Construction shall be in general conformity with the elevation plans and exterior improvements identified in the plans provided in Exhibit 5 and attached as ATTACHMENT 2 hereto, provided that in the event the rear exterior basement entrance is determined, as hereinafter provided in Conditions 2 and 3 hereof, to result in irreversible tree injury or necessitate tree removal, such exterior access entrance in the location indicated shall not be permitted.
- 2. The Applicant shall, at his sole cost and expense, retain a qualified arborist, satisfactory to the Director of Urban Forestry (or equivalent), of the City of Toronto, for the purpose of conducting an inventory and tree health assessment, and reporting in writing with recommendations on any tree located in the rear yard of 46 and 48 Admiral Road immediately proximate to or affected by the rear yard construction according to the plans in Attachment 2, hereto. The aforesaid report is be provided to the owners of both properties forthwith on completion.
- 3. The Applicant shall, at his sole cost and expense including all remedial works required, if any, cause the submission of a complete application for permit to

injure or remove privately-owned trees under Municipal Chapter 813, Article III, Private trees.

- 4. The Applicant shall, at his sole cost and expense including the cost of all remedial works required, retain a qualified structural engineer, for the purpose of evaluating, documenting, making recommendations and reporting in writing on remedial works required for the preservation, maintenance and drainage enhancement of the existing party wall between 46 and 48 Admiral Road, and any exiting extension above and below grade, to permit construction in accordance with the plans in Attachment 2 hereto and to save harmless from injury and cost the adjoining property interests at 46 Admiral Road.
- 5. The requirement for reports and the application specified in Conditions 2, 3 and 4 hereof shall be completed and submitted to the Chief Building Official of the City of Toronto for consideration and implementation in any plans approval or amendment process and <u>prior to</u> building permit issuance.
- 6. The Appellants shall, at their sole cost and expense remain responsible for any fence or portion thereof removed or damaged in implementing the plans in Attachment 2 hereto, and for its suitable replacement, as a condition of building permit issuance.

If there are difficulties in interpreting or the application of this decision and order, the TLAB may be spoken to.

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Ian Lord Chair, Toronto Local Appeal Body Signed by: Ian Lord

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.10.40.30.(1)(A), By-law 569-2013 The maximum permitted building depth for a semi-detached house is 17.0 m. The building depth of the altered dwelling will be 24.99 m.

2. Chapter 10.10.40.30.(1) (A), By-law 569-2013 The maximum permitted floor space index is 1.0 times the area of the lot (329.8 m2). The floor space index will be 1.10 times the area of the lot (363.60 m2)

1. Section 6(3) Part II 5(II), By-law 438-86 The maximum permitted building depth is 17.0 m. The building depth of the altered dwelling will be 25.22 m.

2. Section 6(3) Part I 1, By-law 438-86 The maximum permitted floor space index is 1.0 times the area of the lot (329.8 m2). The floor space index of will be 1.10 times the area of the lot (363.60 m2).

3. Section 6(3) Part II 3.B(I), By-law 438-86 The minimum required side lot line setback is 0.45 m for a depth not exceeding 17.0 m where the side walls contain no openings. The side lot line setback will be 0.0 m to the south lot line

4. Section (3) Part II 3(I), By-law 438-86A building is required to have a minimum separation distance of 0.90 m to the side wall of an adjacent building that contains no openings.The building will be located 0.0 m from the adjacent building.

5. Section 6(3) Part II 2(II), By-law 438-86 A building on an inside lot is required to have a minimum front lot line setback of 3.91 m. The front lot line setback will be 3.68 m.



By Committee of Adjustment TEY at 11:34 am, Mar 23, 2017



ADMIRAL ROAD

SURVEY INFORMATION PROVIDED BY: VLADIMIR DOSEN SURVEYING ONTARIO LAND SURVEYORS, 2016

SITE PLAN 1:250 48 ADMIRAL ROAD.

Z

DREW LASZLO ARCHITECT















SIDE (NORTH) ELEVATION 1:125 48 ADMIRAL ROAD.

DREW LASZLO ARCHITECT



SITE STATISTICS 48 Admiral Road Part 1 Part of Lot 84 Registered plan M-6 City of toronto				
	EXISTING:		PROPOSED:	
ZONE:	R1 / R (f10.5; d1.0) (x714)			
LOT AREA:	3,549.70 S.F.[329.77m2] -			
LOT FRONTAGE:	25.00'	[7.62m]	-	
BUILDING HEIGHT:	±34.71'[10.58m]/±42.39'[12.92m]			
LENGTH OF DWELLING:	75.75'	[23.09m]	82.38'	[25.11m]
SETBACKS:				
Front: Rear: Side (North): Side (South):	12.83' 53.44' 2.76' -	[3.91m] [16.29m] [0.84m] —	12.83' 46.82' 2.76' —	[3.91m] [14.27m] [0.84m] —
GROSS FLOOR AREA:				
GROUND FLOOR: SECOND FLOOR: THIRD FLOOR:	1313.65 S.F. 1226.61 S.F. 776.82 S.F.	[122.04 m2] [113.95 m2] [72.17 m2]	1,569.51 S.F. 1,567.60 S.F. 776.82 S.F.	[145.81 m2] [145.63 m2] [72.17 m2]
TOTAL:	3,317.08 S.F. (93.45%)	[308.16 m2]	3,913.93 S.F. (110.26%)	[363.60 m2]
FRONT LANDSCAPING:				
LANDSCAPING:	Existing to remain			
SOFT LANDSCAPING:	EXISTING TO REMAIN			
REAR LANDSCAPING:	961.88 SF (82.01%)			

